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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,140	01/13/2004	Jace Agee	1990.AGEE.NP	3819
26986 7590 03/13/2007 MORRISS O'BRYANT COMPAGNI, P.C. 136 SOUTH MAIN STREET SUITE 700 SALT LAKE CITY, UT 84101			EXAMINER VANAMAN, FRANK BENNETT	
			ART UNIT	PAPER NUMBER
			3618	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/13/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/757,140

Applicant(s)

AGEE ET AL.

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**Status of Application**

1. Applicant's amendment, filed Dec. 15, 2006, has been entered in the application. Claims 1-6 and 8-20 are pending.

**Claim Rejections - 35 USC § 112**

2. Claims 1-6, 8, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 6, it is not entirely clear whether the recited top surface is the same surface recited in line 3, a constituent thereof, or a separate surface -- additionally note the top surface recitation in line 13.

**Claim Rejections - 35 USC § 103**

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foss et al. in view of Austin (US 5,915,723, cited previously). Foss et al. teach a cart for hauling items, including a bed comprising at least two sections (17, 52) joined together for pivotal motion (at 65) between extended and collapsed positions, plural right and left handle portions (81, 82), connected together by a cross bar (83) which functions as a handle portion as well, and serves as a spacer between elements 81 and 82 and which links them together to allow them to both be moved in unison, and at least one wheel assembly (30, 31) secured to the cart at a position opposite that of the handle portions; the handles being pivotally connected to the cart (at 76) and further including plural locking devices (90, 94) for securing the handle portions in an extended use position, at least one handle assembly portion including opposing ends including a lower terminal end (lower ends of 78, 80) positioned so as to be more proximate, to the breadth actually claimed, the bed portion than the upper portions thereof (e.g., upper ends of 72, 78, 80 and 81, 82, 83) with one locking mechanism (90, 94 at the top of 71, 74, 75) between the lower terminal end and bed; at least one frame (13, 14, 15, 16, etc) surrounding the bed (17); a cart bed positioning mechanism constituting the respective contacting ends of portions 13 and 45, and portions 14 and 44 which inter-engage to position the cart in a non-collapsed state (see figures 4 and 5); a handle positioning

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mechanism constituting the respective engaging sides of 71 and 15, and 74 and 15, which position the handle in a non-collapsed position; the cart bed including a fender element (117) positioned between the wheels (e.g., 30, 31) and the bed (e.g., 52), wherein the cart is provided with a handle (215) portion, opposingly spaced with respect to at least one wheel, and which functions as an auxiliary handle usable to support and carry the cart when in a collapsed position (see col. 16, lines 50-54), and wherein a locking device is further provided (325) which is positioned and arranged to hold the frame elements in a collapsed position (col. 16, lines 41-50).

The reference to Foss et al. fails to teach that the locking device (e.g., 90, 94 at the lower terminal ends of 72, 78, 80) allows positioning at a non-perpendicular angle. Austin teaches a cart having a handle (78), which can be positioned with respect to a cart portion in various angles (note solid and phantom lines, figure 1, and figure 11) through the use of a locking device (note elements 80, 82, 84, figure 11). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the locking devices taught by Foss et al. as variable angle devices as taught by Austin, for the purpose of allowing adjustment of the handle position, for example to change the handle elevation to accommodate a user's desired position or orientation (see Austin, col. 5, lines 52-53).

#### **Allowable Subject Matter**

5. Claim 1, as best understood, would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

6. Claims 2-6, 8 and 9, as best understood, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. As regards claims currently rejected under 35 USC §112, second paragraph, please note that rejections under 35 USC §102 and 103 should not be based upon considerable speculation as to the meaning of the terms employed and assumptions as to the scope of the claims when the claims are not definite. See *In re Steele* 305 F.2d 859, 862, 134 USPQ 292, 295 (CCPA 1962). When no reasonably definite meaning can

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be ascribed to certain terms in a claim, the subject matter does not become anticipated or obvious, but rather the claim becomes indefinite. See *In re Wilson* 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). As such the currently pending claims may be subject to prior art rejections not set forth herein upon the clarification of the claim language.

### **Response to Comments**

8. Applicant's comments, filed with the amendment, have been carefully considered. As regards the reference to Foss et al. and claims 1-6, 8 and 9, the examiner agrees that the reference fails to teach each and every limitation of the claims as now amended. As such, no prior art rejection is advanced against these claims at this time. As regards applicant's comments directed to the combination of Foss et al. and Austin, these comments are not persuasive. Applicant states that no motivation is set forth. The examiner disagrees, and further notes that the office action set forth a motivation in the statement of rejection, and additionally, Austin provides the motivation as well, at the cited passage (Austin at Col. 5, lines 52-53). Additionally, note that the bottom portion of handle assembly 72 is the most proximate portion of this handle assembly with respect to the bed portion, to the breadth of the term "proximity" allows, which is understood to refer to a degree of closeness. So, as regards applicant's analysis of the requirements for a prima facie case of obviousness, the combined references do teach all claimed limitations to the breadth that these limitations are actually recited in the claims. As regards applicant's comments that Foss et al. do not teach or suggest a non-perpendicular arrangement in a state other than collapsed, the examiner disagrees, inasmuch as there is no angle limiting mechanism (other than latch 90/94) shown associated with the connection at the terminal end of handle assembly element 72. Furthermore, applicant is reminded that the phantom lines in figure 4 illustrate handle assembly portions 71, 72 and 73 all at non-perpendicular angles with respect to the base and the phantom-illustrated condition does not constitute a collapsed position, which is shown in solid lines.

### Conclusion

9. Applicant's amendment necessitated the modified ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**



3/7/07